



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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BOSTON, MA 02109-3912

May 2, 2017

Mr. John Brown  
Narragansett Indian Tribal Historic Preservation Officer  
P.O. Box 268  
Charlestown, RI 02813

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Re: Summary of Consultation and Coordination on Warwick/Mill Cove Sewer Project

Dear Mr. Brown:

As you know, the U.S. Environmental Protection Agency (EPA) Region 1 has conducted consultation and coordination with the Narragansett Indian Tribe (Tribe) regarding a planned project (Project) involving construction of sewer infrastructure to replace failing septic systems and cesspools in the Mill Cove community of Warwick, Rhode Island. The Project will be funded, in part, with EPA Clean Water Act State Revolving Fund (CWA-SRF) loan funding. The Project will be managed by the City of Warwick (City). EPA has consulted and coordinated with the Tribe's Historic Preservation Office (NITHPO) pursuant to the National Historic Preservation Act (NHPA), Executive Order 13175, and EPA's *Policy on Consultation and Coordination with Indian Tribes* (EPA Policy). Consistent with the EPA Policy, EPA provides this letter to explain how EPA considered the input of Tribe.

Both the EPA and the City have been actively engaged in consultation with the NITHPO for nearly nine years (*see Attachment – Table of Consultation and Coordination Meetings Since 2011*). Following extensive consultation, the City, EPA, the Rhode Island State Historic Preservation Officer (SHPO) and the NITHPO developed a proposed plan to avoid, minimize or mitigate adverse impacts to tribal cultural properties, in part, by conducting thorough archaeological investigations in all areas that require excavation and employing directional drilling methods for the installation of sewer mains and services to depths well below the likelihood of encountering tribal cultural properties.

A draft Memorandum of Agreement (MOA) and Unanticipated Discoveries Plan was prepared in accordance with 36 CFR § 800.6 (Resolution of Adverse Effects), with EPA, the City and the SHPO as signatories, as well as the NITHPO and the American Council on Historic Preservation (ACHP) as invited signatories.<sup>1</sup> The draft MOA was circulated to the NITHPO and other stakeholders for review in January 2016. Numerous subsequent consultation meetings were held to bring about agreement on the terms of the draft agreement.

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<sup>1</sup> 36 CFR § 800.6 Resolution of Adverse Effects (c)(2)(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.



During the review process, the NITHPO took exception to the draft MOA due to the inclusion of the SHPO as a signatory and the manner in which the draft MOA cited the Native American Graves Protection and Repatriation Act (NAGPRA). The NITHPO informed EPA that it would not participate as a signatory in the MOA as drafted as a result of these concerns.

On January 6th of this year, after accommodating two requests to reschedule on the part of the NITHPO, Captain Michael Stover, Region 1's Indian Program Manager, and Michael Knapp, Assistant Regional Counsel, traveled to the Narragansett Indian Reservation to meet with the NITHPO and discuss the MOA. The NITHPO refused to engage in further discussion about the Tribe participating in the MOA and abruptly ended the meeting after a short time as a result of the two matters pertaining to NAGPRA and the SHPO.

On February 16<sup>th</sup>, EPA sent a letter to Chief Sachem Thomas, with a copy to the NITHPO, requesting consultation on the Project under the EPA Policy and Executive Order 13175. The Chief initially accepted the invitation and a meeting was set for March 1<sup>st</sup>. Subsequently, however, the Chief informed EPA that the NITHPO is responsible for all Tribal historic preservation matters and recommended that EPA conduct this consultation meeting directly with the NITHPO. EPA thus sought the NITHPO's confirmation of the scheduled March 1<sup>st</sup> meeting. The NITHPO informed EPA that this date would not work for him but that he could accommodate a meeting on the week of March 6<sup>th</sup>. Due to the death of a Tribal elder, however, the NITHPO requested a delay of the meeting planned for the week of March 6<sup>th</sup>. Finally, EPA and the NITHPO were able to meet on March 16<sup>th</sup> at the offices of the Tribe's attorney. Mr. Stover and Mr. Knapp again participated in-person, while acting Regional Administrator Deb Szaro participated via telephone.

Because the NITHPO and EPA could not reach agreement after repeated attempts during these meetings on certain provisions in the draft MOA, EPA informed counsel for the NITHPO on March 23, 2017, that it was moving forward with the MOA as drafted. The Project addresses a significant and pressing environmental problem. Construction for the Project is slated to commence in the Spring of 2017. At this point, progress on the Project has been delayed pending execution of the MOA. EPA and the City have consulted and coordinated with the NITHPO for several years and discussions regarding the MOA have been occurring for at least 15 months. Because the NITHPO remains unwilling to sign the MOA as drafted after such extensive efforts, which have resulted in significant delay to the Project, it is no longer reasonable to delay the Project any further. Pursuant to 36 C.F.R. § 800.6(c)(2), as well as the Advisory Council on Historic Preservation's guidance document entitled "*Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*," the Tribe's decision not to participate in the MOA as an "invited signatory" does not preclude the Project from moving forward or invalidate the MOA.

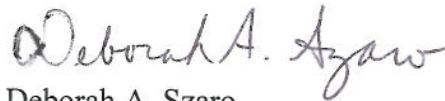
Accordingly, and only after considerable efforts to accommodate the Tribe as a signatory, EPA will execute the MOA with the City and the SHPO, with the understanding that the NITHPO has declined to participate as a signatory. EPA will ensure that a copy of the executed MOA, along with all appendices, is provided to the NITHPO. EPA will also ensure that NITHPO remains informed and aware of all significant Project developments as they pertain to Tribal cultural properties.

Although the NITHPO will not be participating as a signatory, the MOA significantly reflects the input and contributions made by the NITHPO during the MOA drafting process. As the NITHPO mentioned at our last consultation meeting, the Tribe has been a strong advocate for the use of deep directional drilling to avoid tribal historic and cultural properties. The City has agreed to employ such drilling at considerable added cost. Additionally, at the NITHPO's request, a cultural and historical context of the Tribe's affiliation with the project area was incorporated into the MOA.

As EPA has repeatedly expressed to the NITHPO, our hope is that the Tribe will remain engaged in the Project and provide its input and expertise as appropriate. EPA understands and appreciates the cultural and historic importance of this area to the Tribe. EPA remains committed to ensuring that the Project will responsibly and adequately avoid, minimize, or mitigate any potential adverse effects on Tribal cultural properties, as required by the NHPA.

If you have questions or concerns, please contact Captain Michael Stover, P.E., Region I Indian Program Manager at (617) 918-1123 or [stover.michael@epa.gov](mailto:stover.michael@epa.gov). Please direct any legal questions to Michael Knapp of our Office of Regional Counsel at (617) 918-1053 or [knapp.michael@epa.gov](mailto:knapp.michael@epa.gov).

Sincerely,



Deborah A. Szaro  
Acting Regional Administrator

Enclosure: Table of Consultation and Coordination Meetings since 2011

cc: Narragansett Tribal Leader  
Mr. Bill Devereaux, Attorney  
Mr. John Eddins, ACHP



# Attachment

Table of Consultation and Coordination Meetings since 2011: Warwick/Mill Cove Sewer Project

Date	Location	Date	Location
1 Dec 2011	Warwick Sewer Authority	2 Dec 2015	Warwick Sewer Authority
13 Jan 2012	Warwick Sewer Authority	7 Dec 2015	Warwick Sewer Authority
2 Mar 2012	Warwick Sewer Authority	11 Dec 2015	Governor Francis Inn
30 Mar 2012	Warwick Sewer Authority	19 Jan 2016	Warwick Sewer Authority
27 Apr 2012	Warwick Sewer Authority	2 Feb 2016	Warwick Sewer Authority
8 Jun 2012	Warwick Sewer Authority	23 Feb 2016	Narragansett Longhouse
13 Jul 2013	Warwick Sewer Authority	2 Mar 2016	Conference Call
29 Aug 2013	Warwick Sewer Authority	22 Apr 2016	Warwick Sewer Authority
4 Sep 2013	Warwick City Hall	14 Jun 2016	Warwick Sewer Authority
8 Oct 2014	Warwick Sewer Authority	24 Jun 2016	Warwick Sewer Authority
19 Nov 2014	Warwick Sewer Authority	4 Nov 2016	Conference Call
28 Oct 2015	Warwick Sewer Authority	6 Jan 2017	Narragansett Longhouse
		16 Mar 2017	Law Offices of Bill Devereaux